

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**ASHBY L. RICHERSON, JR.,**

**TONI L. RICHERSON,**

Plaintiffs,

v.

Civil Action No.: 3:10cv888-HEH

**U.S. BANK NATIONAL ASSOCIATION, et al,**

Defendants.

**MEMORANDUM IN RESPONSE TO MOTION TO DISMISS**

**AND IN SUPPORT OF MOTION TO AMEND**

COME NOW the Plaintiffs, Ashby L. Richerson, Jr., and Toni L. Richerson, by counsel, and for their Memorandum in Response to Defendants Motion to Dismiss and in Support of their Motion to Amend state as follows:

**MOTION TO DISMISS**

Thorough consideration of the arguments posed by Defendants' counsel in their Motion to Dismiss for Failure to State a Claim resulted in a reevaluation of Plaintiffs Amended Complaint and claims. The result is that Plaintiffs have filed a Motion to Amend that removes a number of the claims argued against by the Defendants. Should the Court grant Plaintiffs' Motion to Amend, a response to the majority of Defendants' Motion to Dismiss arguments is moot.

For reasons described below, Plaintiffs' First Federal Amended Complaint does not include claims against any party for Fraud/Misrepresentation, Conversion, Violations of the Fair

Debt Collections Practices Act and Breach of Good Faith and Fair Dealing. As such, Plaintiffs do not ask the Court to consider their intended arguments in support of those claims.

### **MOTION TO AMEND**

#### **Standard of Review**

“Rule 15(a) of the Federal Rules of Civil Procedure provides that when a party seeks leave to amend a complaint ‘leave shall be freely given when justice so requires.’” Ward Electronics Serv. v. First Com’l Bank, 819 F.2d 496 497 (C.A.4, 1987). “Motions to amend are typically granted in the absence of an improper motive, such as undue delay, bad faith, or repeated failure to cure a deficiency by amendments previously allowed.” Harless v. CSX Hotels, 389 F.3d 444, 447 (C.A.4, 2004).

#### **Argument**

Initially, Plaintiffs note to the Court that their Amended Complaint was drafted for and filed in state court, in Chesterfield County Circuit Court. While state court proceedings and the application of the law are no less exacting than that of federal courts, pleadings in state court are not routinely subject to the heightened pleading requirements established by Twombly, 127 S.Ct. 1955 (2007), and Iqbal, 129 S.Ct. 618 (2008). Amendment of Plaintiffs’ Complaint to conform better to federal standards was determined as likely early in counsel’s preparation of a response to Defendants’ Motion to Dismiss. Plaintiffs also note that this is their first request to amend their Complaint with the case under this Court’s jurisdiction.

Plaintiffs’ original Complaint was filed in May, 2010, and the posture of the case regarding defendant James Fox has changed significantly. Fox has been in the custody of the U.S. Attorney’s Office on criminal charges of fraud and conspiracy for much of the past year. Any indications of possible restitution for his victims have vanished in the interim. Sentencing

for Fox himself is imminent, being expected on a daily basis, and the likelihood of his incarceration appears high. Plaintiffs now consider claims directly against Fox to be of little value and wish to remove those claims.

Plaintiffs still consider their claims for violations by the Defendants of the Fair Debt Collections Practices Act to have a sound legal basis. However, after full consideration of Defendants arguments in opposition to those claims, Plaintiffs now consider the likelihood of prevailing on the claims to be low and wish to remove those claims.

Plaintiffs have consolidated their claims into a single count of Quiet Title and Injunctive Relief, incorporating those facts previously included in other claims that are applicable. The economies of justice favor granting Plaintiffs' Motion, as the Court need only consider those claims still in controversy.

### **CONCLUSION**

Wherefore, Plaintiffs ask this Honorable Court to deny Defendants' Motion to Dismiss without prejudice and with leave to file a subsequent Motion to Dismiss Plaintiffs First Amended Federal Complaint if desired, to grant Plaintiffs' Motion to Amend their Complaint, and for such other relief the Court deems just and proper.

ASHBY L. RICHERSON, JR.  
TONI L. RICHERSON

/s/  
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